

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

3:08cv51

(3:06cr7)

THOMAS L. FRANKLIN,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

ORDER

THIS MATTER comes before the Court upon Petitioner's Motion pursuant to 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence (Doc. No. 1), and the Government's Response (Doc. No. 8).

After careful review of the pleadings, the Court has determined that an evidentiary hearing is necessary to resolve Petitioner's claim that his attorney refused to file an appeal. Furthermore, Rule 8(c) of the Rules Governing Section 2255 Proceedings requires the appointment of counsel for such a hearing if the petitioner qualifies under 18 U.S.C. § 3006A. Petitioner previously qualified for appointed counsel in the underlying criminal case, and the Court is not aware of any favorable change in his financial status. Accordingly, the Court finds that Petitioner qualifies for appointed counsel in this matter.

IT IS, THEREFORE, ORDERED that:

1. an evidentiary hearing regarding Petitioner's claim that his attorney refused to file an appeal as directed is scheduled for Monday, April 4, 2011 at 9:40 a.m. in the Robert D. Potter Courtroom of the United States Courthouse in Charlotte, North

Carolina; and

2. the Community Defender shall designate counsel promptly to represent Petition on the limited issue at the evidentiary hearing.

The Clerk is directed to certify copies of this Order to Petitioner, the Community Defender, the United States Attorney, and the United States Marshal's Service.

Signed: February 4, 2011



Robert J. Conrad, Jr.
Chief United States District Judge

